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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1404

TERRANCE E. DOWNEY,
Petitioner,

versus

THOMAS CALLERY, Et Als.,
Respondents.

ON PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

BRIEF FOR RESPONDENT IN OPPOSITION

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MAY IT PLEASE THE COURT:

ARGUMENT

This Louisiana law controversy involves factual issues reviewed by three Louisiana Courts. In denying writs in this case, a majority of the Supreme Court of Louisiana stated: "Writ refused. On the facts found by the Court of Appeal, there is no error of law." 340 So. 2d 1390 (1977).

Petitioner claims a denial of due process of law because Louisiana Justice Summers' concurring opinion allegedly applied a state statute retroactively. Reading the Justice's short concurring opinion shows that such is not the case:

> Summers, J. (Concurring in denial). I am of the opinion *Canter v Koehring*, 283 So. 2d 716 (La. 1973) should be overruled. See also Act 147 of 1976, legislatively overruling *Canter v Koehring*. 340 So. 2d 1390 (1977)

The Justice merely states that *Canter v Koehring* has been overturned by statute. He does not state that this is the basis of his decision. He cites a 1976 state statute as merely confirming his belief that *Canter* was erroneous.

As his second argument Petitioner urges that he has been deprived of due process of law because the Louisiana Court of Appeals failed to apply the required standard of judicial review. This argument was rejected by both the Court of Appeals on rehearing and the Louisiana Supreme Court in denying writs.

The Court of Appeals rejected Petitioner's plea on rehearing stating it did not transgress standards of judicial review in factual matters.

> It becomes obvious that the basis for our holding is not at all a finding of facts inconsistent with that of the trial Judge because he did not reach that fact question at all. He made no finding as to whether or not Callery delegated

> his general responsibility for safety in the handling of Na Fd to a subordinate and whether or not that subordinate was "responsible." We made affirmative findings on these factual issues. . . . 338 So. 2d at 945.

In denying writs, the Louisiana Supreme Court ruled on the correctness of the factual findings of the intermediate appellate court.

Thus both of Petitioner's arguments must be rejected. The two highest Courts in Louisiana disposed of these arguments based on factual findings. The Supreme Court of the United States does not sit to review on certiorari civil, factual determinations of the state trial, appellate and supreme courts. Rule 19, Rules of The Supreme Court of the United States.

CONCLUSION

The petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served three copies of the foregoing Brief for Respondent in Opposition upon the following attorneys:

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by mailing the same to them at the addresses indicated above by United States Mail, first class postage prepaid.

This 10th day of May, 1977.

WILLIAM A. PORTEOUS, III